IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.194/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

CORAM : A.P. Lavande, J.

Dated : 21.4.2007.

Heard Mrs. Kalamkar, learned counsel for the appellant and Mr. Kshirsagar, learned counsel for the respondent.

By this appeal, the appellant who is original defendant challenges the judgment and decree dated 28th September 2005 passed by 11th Adhoc Additional District Judge, Nagpur in Regular Civil Appeal No. 102/1999 dismissing the appeal filed by the appellant against the judgment and decree dated 29.8.1998 passed by 3rd Joint Civil Judge, Jr. Dn. Nagpur in Regular Civil Suit No.433/1997.

The respondent-plaintiff filed the above suit for specific performance of contract of sale dated 2.4.1996 in respect of the suit property. According to plaintiff, the defendant entered into agreement of sale of the suit property to the plaintiff for total consideration of Rs. 25,000/-, out of which Rs. 16,000/-

was paid as earnest money and the sale deed was to be executed within one year by paying balance consideration. Since the defendant refused to execute the sale deed in spite of notice, the plaintiff filed the above suit for specific performance. The suit was contested. Upon appreciation of the evidence led by the parties, the trial Court held that the plaintiff had proved the agreement of sale as well as the payment of earnest money. The trial Court negatived the claim of the defendant that the plaintiff had taken signature of the defendant on blank stamp paper and that the plaintiff had advanced Rs. 10,000/- as loan to the defendant on account of friendly relationship since the defendant was in need of money for marriage ceremony of his daughter. The Appellate Court also concurred with the findings given by the trial Court.

Mrs. Kalamkar, learned counsel for the appellant submitted that both the Courts below have erred in relying upon the evidence led by the plaintiff and rejecting the evidence led by the defendant. According to learned counsel, the plaintiff had not proved the contents of the agreement and on the contrary the defendant had proved that he had signed on blank stamp paper after the plaintiff had advanced

Rs. 10,000/- to the defendant since the defendant was in need of money for marriage of his daughter. According to learned counsel, the findings recorded by both the Courts below are perverse warranting interference in second appeal.

Per contra, Mr. Kshirsagar, learned counsel for the respondent supported the findings given by both the Courts below.

Having perused the judgments passed by both the Courts below and having considered the submissions made by learned counsel for the parties, I find no merit in the present appeal. The finding of the trial Court which has been confirmed by the lower appellate Court that the plaintiff has proved the execution of the agreement for the sale of the suit property in favour of the plaintiff is borne out from the evidence on record. The evidence of the plaintiff as well as the attesting witness to the agreement clearly establishes the execution of the agreement of sale. Moreover, the defendant in his cross-examination has also admitted that his son had also signed on the agreement as one of the attesting witnesses. This admission made by the defendant clearly belies the defence that he has signed the blank stamp paper at

the request of the plaintiff after the plaintiff advanced loan of Rs. 10,000/- for marriage of his daughter. In my opinion, the findings recorded by both the Courts below are borne out from the evidence on record and as such cannot be said to be perverse. There are concurrent findings of fact and as such no interference is called for in exercise of jurisdiction under Section 100 of the Code of Civil Procedure. I find that no substantial question of law is involved in the present appeal. Hence, the appeal is rejected.

C.A. No. 2252/2006

Since the second appeal has been rejected, nothing survives in the appeal. Hence, the application is rejected.

JUDGE

A.